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13 **IN THE UNITED STATES BANKRUPTCY COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 In re:
16 NIMBUS BREWING COMPANY, LLC,
17
18 Debtor.

In Proceedings Under Chapter 11

Case No. 4:12-bk-08122-EWH

**REWARDS NETWORK
ESTABLISHMENT SERVICES'
OBJECTION TO DISCLOSURE
STATEMENT**

19 REWARDS NETWORK ESTABLISHMENT SERVICES INC. ("**Rewards**
20 **Network**"), a secured creditor and party-in-interest in the above-captioned Chapter 11 case (the
21 "**Bankruptcy Case**"), hereby files this Objection to the Disclosure Statement filed on
22 December 18, 2012 [Docket No. 75] by NIMBUS BREWING COMPANY, LLC, the debtor and
23 debtor-in-possession (the "**Debtor**").

24 A disclosure statement must contain "adequate information." See 11 U.S.C.
25 §1125(b). The "adequate information" that must be set forth in a disclosure statement is
26 "information of a kind, and in sufficient detail, as far as is reasonably practical in light of the
nature and history of the debtor and the condition of the debtor's books and records, that would
enable a hypothetical investor typical of the holders of claims or interests in the case to make an
informed judgment about the plan. 11 U.S.C. §1125(a)(1).

1 Rewards Network holds a valid and perfected first priority lien and security
2 interest in all of the Debtor's personal property. See Cash Collateral Order at ¶ 7 [Docket No. 25]
3 (the "**Cash Collateral Order**"). As such, the Disclosure Statement must provide Rewards
4 Network with sufficient information to allow it to vote on the First Plan Of Reorganization Dated
5 December 18, 2012 (the "**Plan**"). As set forth more fully below, the Disclosure Statement falls
6 short of providing adequate information.

7 **I. THE PLAN AND THE DISCLOSURE STATEMENT DO NOT CLEARLY**
8 **INDICATE WHETHER THE DEBTOR IS ASSUMING OR REJECTING THE**
9 **AGREEMENTS UNDER THE PLAN.**¹

10 Under the Cash Collateral Order, Rewards Network and the Debtor continue to
11 perform their respective obligations under the Agreements. The Debtor continues to receive, and
12 Rewards Network continues to provide, marketing and loyalty services, which drive Rewards
13 Network's members to the Debtor's Restaurant and generate accounts receivable. See Cash
14 Collateral Order at ¶16. The Debtor, in turn, continues to remit a portion of the receivables
15 generated by Rewards Network's members to reduce Rewards Network's outstanding secured
16 claim. Id. at ¶12. The Debtor and the Court have acknowledged that the Agreements are
17 executory contracts. Id. at ¶13.

18 The Disclosure Statement and the Plan are unclear as to whether Debtor intends to
19 assume or reject the Agreements. Article VI of the Plan states that "[t]he Debtor rejects all
20 executory contracts or unexpired leases to which they are a party, except any specifically
21 provided prior to the hearing on the Disclosure Statement. Plan at Art. VI [Docket No. 76.]
22 However, the Disclosure Statement states that "[t]he Plan provides that pursuant to Section 365 of
23 the Bankruptcy Code, the Debtor assumes all executory contracts." Disclosure Statement at §11.3
24 [Docket No. 75.] These statements are clearly contradictory as the Plan provides for rejection and

25 ¹ Unless otherwise defined herein, defined terms shall have the same meaning given them in the
26 Agreed Order: (I) Authorizing Debtor's Limited Use Of Cash Collateral, And (II) Granting Postpetition
Replacement Liens And Adequate Protection. See Docket No. 25.

1 the Disclosure Statement informs the creditor that the Plan provides for assumption. Presumably,
2 the Plan would control the issue as the Disclosure statement provides,

3 Whether a creditor or interest holder votes on the Plan or not, or
4 whether the creditor or interest holder votes at all, such party will
5 be bound by the terms and treatment set forth in the Plan if the Plan
is accepted by the requisite majorities of creditors and interest
holders and is confirmed by the Bankruptcy Court.

6 Thus, Rewards Network is in limbo and cannot determine if the Agreements are being assumed or
7 rejected by the Debtor and, therefore, cannot make an informed judgment about the Plan.

8 **II. THE PLAN AND DISCLOSURE STATEMENTS ARE CONFLICTING**
9 **REGARDING THE TREATMENT OF REWARDS NETWORK'S CLAIM.**

10 As noted above, there are conflicting statements in the Plan and Disclosure
11 Statement as to whether the Agreements are accepted or rejected. Moreover, if the Debtor intends
12 to assume the Agreements, then the assumption will fix the treatment. However, if the Debtor
13 intends to reject the Agreements, then Rewards Network will have a liquidated, first priority
14 secured claim which must be paid in accordance with the Bankruptcy Code. Neither the
15 Disclosure Statement or the Plan provide any indication as to how Rewards Network's liquidated
16 secured claim will be paid, the amount of such claim, the interest rate to be applied to the debt, or
17 the proposed payment schedule.

18 The Disclosure Statement provides that Rewards Network's claim may not be fully
19 secured. See Disclosure Statement at §5.5. Yet, the Disclosure Statement suggests that junior
20 creditors have a "secured" claim in the very property that Rewards Network has a superior lien.
21 See, e.g., *id.* at §§5.6 (BMT's "secured claim" in equipment), 5.7 (Nationwide's "secured" claim
22 in leased equipment), 5.8 (U.S. Bancorp's "secured" claim in equipment). Rewards Network
23 cannot have a partially secured claim while junior creditors also have a secured claim in Rewards
24 Network's collateral.

1 **III. THE DISCLOSURE STATEMENT AND PLAN ARE CONFUSING AS TO**
2 **WHETHER EQUITY HOLDERS ARE REQUIRED TO CONTRIBUTE NEW**
3 **VALUE.**

4 The Disclosure Statement also confusingly indicates that existing equity will retain
5 its interests without a new value contribution "as allowed claims are being paid in full." Id. at
6 §4.16. The Debtor's equity holders will retain their interest "unless participating investors are
7 required to contribute **substantial** capital required to fund this Plan and/or make capital
8 improvements to the subject property." Id. at §5.15 (emphasis added). These statements appear
9 to be contradictory as one suggests claims are being paid in full and no equity is required, while
10 later suggesting that additional capital will, in fact, be needed. In addition, as noted above, it is
11 not clear that Rewards Network's claim is going to be paid in full.

12 To further confuse matters, the Debtor's equity interest holders retain their interest
13 unless a "substantial" capital contribution is made, but there is no provision in the Disclosure
14 Statement or Plan to determine what amount constitutes a "substantial" contribution or who
15 makes that determination. In short, the Disclosure Statement provides inadequate information
16 regarding whether claims are being paid in full and whether the Debtor's members are
17 contributing new value to retain their interests.

18 **IV. CONCLUSION.**

19 In light of the foregoing, Rewards Network objects to the Disclosure Statement
20 because (i) it fails to clearly indicate whether the Debtor is accepting or rejecting the Agreements,
21 (ii) if the Agreements are being rejected, then the Disclosure Statement and Plan must be
22 amended to clearly indicate how Rewards Network's secured claim will be paid under the Plan,
23 and (iii) the Debtor should provide sufficient information to allow creditors to determine if a new
24 value contribution is required.
25
26

1 Accordingly, Rewards Network requests that the Court deny the approval of the
2 Disclosure Statement and require the Debtor to amend it to correct the foregoing deficiencies.

3 . RESPECTFULLY SUBMITTED this 30th day of July, 2013.

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8 By /s/ Isaac M. Gabriel
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11 COPIES of the foregoing sent via
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this 30th day of July, 2013, to:

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